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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

YOR920000831US1

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Signature _____

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name _____

Application Number

10/000,149

Filed

12/04/2001

First Named Inventor

Kimbrel

Art Unit

3623

Examiner

L. Krisciunas

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

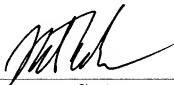
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)☒

attorney or agent of record.

Registration number 32,635☐

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____



Signature

Michael E. Whitham

Typed or printed name

(703) 787-9400

Telephone number

July 28, 2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

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*Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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YOR920000831US1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of

Tracy J. Kimbrel et al.

Docket No. 00280683AA

Serial No. 10/000,149

Group Art Unit No. 3623

Filed December 4, 2001

Examiner Linda Mary Krisciunas

For DYNAMIC RESOURCE ALLOCATION
USING PROJECTED FUTURE BENEFITS

Confirmation No. 8249

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ATTACHMENT TO PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

This Pre-Appeal Brief Request for Review is being concurrently filed in the USPTO with a Notice of Appeal. Payment is provided herewith to satisfy the fees for a Notice of Appeal. If any additional fees are required to satisfy the fees due for the Notice of Appeal or to gain entry and consideration of this Pre-Appeal Brief Request for Review, the Commissioner is authorized to charge Attorney's Deposit Account 50-2041 (Whitham, Curtis, Christofferson & Cook).

The Claimed Invention

Suppose, to take one example from the Specification, there are s Web sites to be served by k Web servers. (For simplicity, assume that all servers are identical.) Time is divided into units, and it is assumed that the demand of a Web site is uniform in each unit of time. Each server has a "service rate" which is the number of requests to a Web site each server can serve in one unit of time. Without loss of generality, demands may be

normalized by the service rate so that a server can serve one request per unit of time and demands of a site may be fractional. A Web server can be allocated to no more than one site at each unit of time, and it takes a time unit to change the allocation of a server.

(Specification at 8, lines 7-15)

Such a resource allocation problem may be modeled and solved mathematically, with time being divided into intervals, according to the claimed invention. (Specification at 4, lines 9-10) A general process implemented by a dynamic resource allocator 14 may begin in function block 21, at which current and forecasted per-customer demands and revenues may be obtained. Current allocations of servers may be obtained in function block 22, and new allocations may be computed in function block 23. The computed new allocations may then be compared with current allocations in decision block 24. In function block 25, if a difference has been found in function block 24, reallocated servers may be directed to serve their new customers before the process loops back to function block 21. If no difference is found in function block 24, the process goes directly from function block 24 to function block 21, to begin anew without passing through function block 25. (Specification at 7, lines 17-27, referring to Figure 2)

Errors and Omissions

The Examiner has made a number of errors and omissions, including, without limitation, the following:

- The Examiner has misinterpreted the term “time-varying . . . allocation” in the base claims (Claim 1, line 4; Claim 12, line 7; and Claim 22, lines 18-19) (emphasis added) as referring to an allocation of time-varying resources rather than to a time-varying allocation of resources (as required in the claims).

Rejection Under 35 U.S.C. § 102(e)

The Examiner rejected Claims 1-27 pursuant to 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application No. 2005/0256778 to Boyd et al., which teaches a

configurable pricing system that allows users to define or modify data used to analyze, evaluate, improve, and design pricing changes according to a user's need. The disclosure of Boyd et al., however, does not teach or anticipate the claimed invention.

While the Examiner uses the phrase “time varying resource” with reference to the disclosure of Boyd et al. (Office Action at 4, line 1), Boyd et al. do not use that term themselves. Boyd et al. teach, among other things, what might be described as an allocation of time-varying resources. (See, e.g., Boyd et al., paragraph 241, cited in the Office Action at 3) By contrast, independent Claims 1, 12, and 22 of the claimed invention use the term “time-varying . . . allocation” (Claim 1, line 4; Claim 12, line 7; and Claim 22, lines 18-19) (emphasis added) to refer to something very different — a time-varying allocation of resources.

The Specification expressly describes “time varying allocation” as denoting an allocation $\{a_{i,t}\}$ that is indexed by time. (Specification at 8, lines 20-24) Other portions of the Specification are also clearly addressed to a time-varying allocation of resources rather than to an allocation of time-varying resources:

- “[D]ynamically allocate” (Specification at 2, line 25; and at 3, lines 7 and 20)
- “[E]ach server has a rate of requests [*i.e.*, not a number of rates or a time-varying rate] it can serve in a time interval” (Specification at 4, line 21)
- “[C]urrent allocations of servers are obtained in function block 22, and then new allocations are computed in function block 23. The computed new allocations are compared with the current allocations in decision block 24 and, if they are different, then in function block 25, re-allocated servers are directed to serve their new customers before the process loops back to function block 21.” (Specification at 7, lines 20-25, discussing Figure 2)
- The discussion of the model states: “[A] server can serve one request per time unit,” and there are no variables representing resources that vary over time. (Specification at 8, line 12-13)

Thus, the rejection of Claims 1-27 is based on a misinterpretation of the term

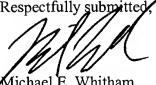
“time-varying . . . allocation” (Claim 1, line 4; Claim 12, line 7; and Claim 22, lines 18-19) (emphasis added) as referring to a time-varying allocation of resources rather than to an allocation of time-varying resources (i.e., time varying resource allocation). Therefore, for this reason as well as others, Boyd et al. do not anticipate Claims 1-27.

Furthermore, the Boyd reference is not a viable reference against the claimed invention. It is noted that U.S. Provisional 60/249057 from which 2005/0256778 to Boyd claims priority describes a system which generates promotion price evaluations and recommendations for product promotions related to a target product of a user. It does not discuss time varying resource allocation. Further, it does not contain any of the figures which appear in U.S. Patent Application 2005/0256778. Similarly, U.S. Patent 09/987,706 differs with respect to Figure 14, and does not discuss time varying resource allocation.

Conclusion

In view of the foregoing, it is respectfully requested that Claims 1-27 be allowed and that the application be passed to issue.

Respectfully submitted,



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